

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 19 3 53 PM '92

MM Docket No. 92-188

DISPATCHED BY

In re Applications of

STEPHEN W. SAMET
(hereafter "Samet")

File No. BPH-910820MB

DORIS A. STUDSTILL
(hereafter "Studstill")

File No. BPH-910820MC

FIRST ASSEMBLY OF
GOD CHURCH
(hereafter "Assembly")

File No. BPH-910821ME

Charles Tiemann d/b/a
STARVED ROCK RADIO
(hereafter "Radio")File No. BPH-910822ME
(DISMISSED HEREIN)For Construction Permit for a New
Commercial FM Station on Channel 271A
at Oglesby, Illinois

HEARING DESIGNATION ORDER

Adopted: August 5, 1992;

Released: August 19, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new commercial FM station.

2. *Hearing Fee.* Radio has not paid the hearing fee which was required by March 2, 1992, the date set forth in *Public Notice*, Mimeo No. 13110, released December 27, 1991. See revised Section 73.3573(g)(2) of the Commission's Rules and *Report and Order* in Gen. Dkt. 90-264 ("Proposals to Reform the Commission's Comparative Hearing Process"), 6 FCC Rcd 157, 157-158, 170 (1990), *Erratum*, 6 FCC Rcd 3472, *recon. granted in part*, 6 FCC Rcd 3403 (1991). Accordingly, the application of Radio will be dismissed.¹

3. *Late-Filed Amendments.* Samet and Studstill petitioned for leave to amend their applications on November 25, 1991 and March 13, 1992, respectively. The accompanying amendments were filed after November 20, 1991, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing

amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

4. *Comparative Coverage.* Data submitted by the applicants indicate there would be a significant difference in the size of the populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. *Conclusion.* Except as may be indicated by any issues specified below, Samet, Studstill, and Assembly are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.
2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That the application of Starved Rock Radio IS DISMISSED and the informal objection filed by Studstill on February 21, 1992 against the Starved Rock Radio application IS HEREBY DISMISSED AS MOOT.

8. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Samet (11/25/91) and Studstill (3/13/92) ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated in paragraph 3.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

¹ In light of this action, the informal objection filed by Studstill on February 21, 1992 against the Radio application will

be dismissed as moot.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau